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Attorneys for Defendants
KIMBERLY-CLARK GLOBAL SALES, LLC;
KIMBERLY-CLARK CORPORATION; and
KIMBERLY-CLARK WORLDWIDE, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JENNIFER DAVIDSON, an
individual, on behalf of herself, the
general public and those similarly
situated,

Plaintiff,

v.

KIMBERLY-CLARK
CORPORATION; KIMBERLY-
CLARK WORLDWIDE, INC.;
KIMBERLY-CLARK GLOBAL
SALES LLC; and DOES 1 through
50

Defendants.

Case No. CGC-14-537962

**DEFENDANTS' NOTICE OF
REMOVAL; DECLARATION OF
AMY P. LALLY**

State Action Filed: March 13, 2014

State Action Served: March 18, 2014

TO THE CLERK OF THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA:

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Kimberly-Clark Global Sales, LLC; Kimberly-Clark Corporation; and Kimberly-Clark Worldwide, Inc. (collectively, “Kimberly-Clark”) hereby remove to this Court the above-styled action, pending as Case No. CGC-14-537962 in the Superior Court of the State of California for the County of San Francisco (the “State Court Action”).

I. INTRODUCTION

1. This case is properly removed to this Court pursuant to 28 U.S.C. § 1441(a) and (b) because the State Court Action is pending in the Superior Court of California, County of San Francisco, which is within the Northern District of California; the Court has original jurisdiction over the State Court Action pursuant to 28 U.S.C. § 1332(d); and the procedural requirements for removal are satisfied. Specifically, this Court has jurisdiction pursuant to the Class Action Fairness Act (“CAFA”) because there is minimal diversity between the parties, the alleged putative class numbers in the “thousands,” and the amount in controversy exceeds the jurisdictional amount of \$5,000,000. *See* 28 U.S.C. §§ 1332(d), 1453.

II. BACKGROUND

2. On or about March 13, 2014, Plaintiff Jennifer Davidson (“Plaintiff”) filed the State Court Action against Kimberly-Clark Global Sales, LLC; Kimberly-Clark Corporation; Kimberly-Clark Worldwide, Inc.; and Does 1 through 50 in the Superior Court of California, County of San Francisco.¹

3. Plaintiff seeks relief on behalf of a statewide class consisting of “[a]ll persons who between March 13, 2010 and the present, purchased, in California, any

¹ Although Plaintiffs have named Kimberly-Clark Corporation and Kimberly-Clark Worldwide, Inc. as co-defendants, those entities are neither necessary nor proper parties to this suit. The sole correct party to this litigation is Kimberly-Clark Global Sales, LLC. While CAFA permits any defendant to unilaterally remove the action where, as here, CAFA’s requirements are met, *see* 28 U.S.C. § 1453(b), in an abundance of caution, all three defendants are removing.

1 of the following products: Cottonelle® Fresh Care Flushable Wipes & Cleansing
 2 Cloths, Scott Naturals® Flushable Most Wipes, Huggies® Pull-Ups® Flushable
 3 Moist Wipes, and U by Kotex® Refresh flushable wipes.”² Compl. ¶ 74.

4 4. The Complaint alleges against Kimberly-Clark violations of the
 5 California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*;
 6 the California False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; the
 7 California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; and the
 8 common law of Fraud, Deceit and/or Misrepresentation, arising out of the sale of
 9 flushable wipes. Compl. ¶¶ 83-125.

10 5. The Complaint seeks restitution, injunctive relief, compensatory
 11 damages, punitive damages, and attorneys’ fees and costs. Compl. at 31:10-32:7.

12 6. On March 18, 2014, process was served on Kimberly-Clark Global
 13 Sales, LLC and Kimberly-Clark Worldwide, Inc. On March 25, 2014, process was
 14 served on Kimberly-Clark Corporation. No defendant has filed an answer or
 15 responsive pleading to the Complaint and no further proceedings have taken place in
 16 the State Court Action. A case management conference has been set for August 13,
 17 2014.

18 **III. JURISDICTION**

19 7. Based on the allegations on the face of the Complaint, this Court has
 20 original jurisdiction over the State Court Action pursuant to CAFA. *See* 28 U.S.C.
 21 § 1332(d).

22 8. CAFA provides for federal jurisdiction of any “class action” composed
 23 of 100 or more putative-class members, where any member of the proposed class is a
 24 citizen of a state different from any defendant, and the amount in controversy
 25 exceeds \$5,000,000 (exclusive of interest and costs). 28 U.S.C. § 1332(d).
 26

27 _____
 28 ²The complaint refers to these products collectively as “flushable wipes”.

9. Although Kimberly-Clark denies that it is liable to any individual or that class treatment is appropriate for this case, removal is proper pursuant to 28 U.S.C. §§ 1332(d) and 1453 because the State Court Action is an action between citizens of different states, on behalf of a putative class numbering in the “thousands,” and involves an amount in controversy exceeding \$5,000,000.

A. There is Minimal Diversity

10. CAFA requires only minimal diversity, namely, that “any member of a class of plaintiffs is a citizen of a State different from any defendant” 28 U.S.C. § 1332(d)(2)(A).

11. Plaintiff alleges that she “is, and at all times alleged in this Class Action Complaint was, an individual and a resident of San Francisco, California.” Compl. ¶ 2. As such, Kimberly-Clark is informed and believes that at the time Plaintiff filed the State Court Action, Plaintiff was a citizen of California.

12. For diversity purposes, a corporation is deemed to be a citizen of: (1) the state under whose laws it is organized; and (2) the state of its “principal place of business.” 28 U.S.C. § 1332(c)(1); *see also Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d 1026, 1028 (9th Cir. 2009). Kimberly-Clark Global Sales LLC is a corporation organized under the laws of Delaware. *See* Compl. ¶ 5; *see also* Declaration of Karen Senn (“Senn Decl.”) ¶3. Kimberly-Clark Global Sales LLC has a principal place of business is Irving, Texas. Compl. ¶ 5; *see also* Senn Decl.) ¶3.

13. The minimal-diversity requirement, therefore, is satisfied because Plaintiff is a citizen of California and Kimberly-Clark Global Sales LLC is a citizen of Delaware and Texas.

B. The Alleged Class Involves At Least 100 Class Members.

14. CAFA requires that “the number of members of all proposed plaintiff classes in the aggregate” be at least 100. 28 U.S.C. § 1332(d)(5)(B).

15. Plaintiff's Complaint was filed as a state-wide class action, as defined in 28 U.S.C. § 1332(d)(1)(B), and alleges a putative class in excess of 100 class members. Compl. ¶ 76 (alleging that plaintiff estimates that the class "is composed of more than 100 persons").

C. The Alleged Amount in Controversy Exceeds \$5,000,000

16. CAFA requires that the "aggregate[]" "matter in controversy exceed[] the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2) & (6). Removal is proper if it is demonstrated, "by a preponderance of evidence, that the aggregate amount in controversy exceeds" \$5,000,000. *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013). The amount in controversy is determined by accepting Plaintiff's allegations as true. *See, e.g., Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 402 (9th Cir. 1996) ("[T]he amount in controversy is met by the express allegations of the plaintiff's complaint." (quotation omitted)); *Cain v. Hartford Life & Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) ("In measuring the amount in controversy, a court must assume that the allegations of the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint.").

17. Although Kimberly-Clark denies that Plaintiff is entitled to any of the relief sought in the Complaint, the relief that the Complaint seeks through restitution, injunctive relief, and attorneys' fees exceeds CAFA's \$5,000,000 amount-in-controversy requirement.

1. Restitution

18. Plaintiff seeks to represent "[a]ll persons who between March 13, 2010 and the present, purchased, in California, any of the following products: Cottonelle® Fresh Care Flushable Wipes & Cleansing Cloths, Scott Naturals® Flushable Most Wipes, Huggies® Pull-Ups® Flushable Moist Wipes, and U by Kotex® Refresh flushable wipes." Compl. ¶ 74, and seeks restitution of "any and all monies acquired by Defendants from the Plaintiff, the general public, or those

1 similarly situated by means of [alleged misrepresentations].” *Id.* ¶ 99; *see also* ¶
2 120.

3 19. Since March 13, 2010, Kimberly-Clark Global Sales LLC’s sales in
4 California of one of the four brands of flushable wipes at issue alone exceeds \$5
5 million. *See* Senn Decl. ¶ 4.

6 2. Injunctive Relief

7 20. Plaintiff also seeks injunctive relief. Costs of compliance with an
8 injunction are relevant in ascertaining whether the amount in controversy
9 requirement is satisfied. *See* 28 U.S.C. 1332(d) (excluding only interest and costs
10 from the aggregated amount in controversy); *see also Guglielmino v. McKee Food*
11 *Corp.*, 506 F.3d 696, 700 (9th Cir. 2007). Pursuant to the CLRA, Plaintiff
12 individually and on behalf of the purported class seeks an injunction barring any
13 practice set forth in the Complaint and ordering that Kimberly-Clark “correct, repair,
14 replace or otherwise rectify” the alleged practices. Compl. ¶ 90.

15 21. An injunction would impose additional costs on Kimberly-Clark Global
16 Sales LLC to re-design and re-package flushable wipes throughout California and
17 possibly nationwide given Kimberly-Clark Global Sales LLC’s distribution model.
18 *See* Senn Decl. ¶¶ 5-7.

19 22. Additionally, if Kimberly-Clark Global Sales LLC is enjoined from
20 selling flushable wipes as packaged in California, it would incur significant losses
21 including the time during which it would have to design new labels for flushable
22 wipes, print them, and package each product, as well as the loss of customer
23 confidence—both at the retail and consumer level—that might result. Senn Decl. ¶
24 8.

25 3. Attorneys’ Fees

26 23. An award of attorneys’ fees, if such fees are specifically authorized by
27 statute, may be considered for purposes of calculating the amount in controversy.
28 *See Kroske v. US Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005). Here, if Plaintiff

1 and/or the putative class succeed on the CLRA claim, recovery of attorneys' fees
2 may be statutorily authorized. *See* Cal. Civ. Code § 1780(e).

3 24. Courts in the Ninth Circuit consider a reasonable and fair estimate of
4 attorneys' fees to be twenty-five percent of the total recovery. *See, e.g., Powers v.*
5 *Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *Lim v. Helio, LLC*, No. CV 11-9183
6 PSG, 2012 WL 359304, at *3 (C.D. Cal. Feb. 2, 2012).

7 25. As explained above, the estimated amount in controversy in the instant
8 case (for restitution, injunctive relief and attorneys' fees) exceeds \$5 million. This
9 amount satisfies CAFA's \$5,000,000 amount-in-controversy requirement based on
10 the allegations of Plaintiff's Complaint.

11 **IV. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE**
12 **SATISFIED**

13 26. This Court is the proper venue for this action under 28 U.S.C.
14 § 1441(a), as the State Court Action is pending in the County of San Francisco,
15 California, and the United States District Court for the Northern District of
16 California is the "district and division embracing the place where such action is
17 pending." 28 U.S.C. § 1441(a).

18 27. The Complaint was filed on March 13, 2014, and served along with a
19 summons on March 18, 2014. Therefore, this Notice of Removal has been timely
20 filed within thirty days of receipt by Kimberly-Clark of a copy of the summons and
21 Complaint, pursuant to 28 U.S.C. §§ 1446(b) and 1453(b).

22 28. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons and Complaint
23 served upon Kimberly-Clark are attached and these are the only process, pleadings,
24 and orders served upon Kimberly-Clark to date.

25 29. Pursuant to 28 U.S.C. § 1446(d), Kimberly-Clark will promptly file a
26 removal notice with the Clerk of the Superior Court of the State of California for the
27 County of San Francisco and will serve written notice of same upon counsel of
28 record for Plaintiff.

1 31. By filing this Notice of Removal, Kimberly-Clark does not waive, either
2 expressly or implicitly, its rights to assert any defense which it could have asserted in
3 the Superior Court of the State of California for the County of San Francisco.

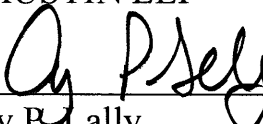
4 WHEREFORE, Defendant Kimberly-Clark Global Sales LLC; Kimberly-Clark
5 Corporation; and Kimberly-Clark Worldwide, Inc. respectfully request that the Court
6 assume jurisdiction over this action.

7
8 Dated: April 14, 2014

Respectfully submitted,

9
10 SIDLEY AUSTIN LLP

11 By:


12 Amy P. Lally

13 Attorneys for Defendants
14 Kimberly-Clark Global Sales LLC,
15 Kimberly-Clark Corporation, and Kimberly-
16 Clark Worldwide, Inc.
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DECLARATION OF AMY P. LALLY

I, AMY P. LALLY, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and before the United States District Court for the Northern District of California. I am a Partner in the law firm of Sidley Austin LLP and counsel for Defendants Kimberly-Clark Global Sales LLC, Kimberly-Clark Corporation, and Kimberly-Clark Worldwide, Inc. The matters set forth below are within my personal knowledge, and if called upon as a witness I could and would testify competently as follows:

2. Attached as Exhibit A is a true and correct copy of the Summons and Complaint in the action styled as *Davidson v. Kimberly Clark Corporation, et al.*, Case No. CGC-14-537962, that was filed in the Superior Court of the State of California, County of San Francisco.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of April, 2014.


Amy P. Lally

EXHIBIT A



**Service of Process
Transmittal**

03/18/2014

CT Log Number 524597666

TO: Karon Faught
Kimberly-Clark Corporation
351 Phelps Drive
Irving, TX 75038-

RE: Process Served in Delaware

FOR: Kimberly-Clark Global Sales, LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Jennifer Davidson, etc., Pltf. vs. Kimberly-Clark Corporation, et al. including Kimberly-Clark Global Sales LLC, Dfts.
Name discrepancy noted.

DOCUMENT(S) SERVED: Attachment(s), Summons, Cover Sheet, Instructions, Complaint, Exhibit(s), Notice, ADR Packets

COURT/AGENCY: San Francisco County - Superior Court - San Francisco, CA
Case # CGC14537962

NATURE OF ACTION: Product Liability Litigation - Class Action - Defendants deceptively market wipes as flushable

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 03/18/2014 at 09:45

JURISDICTION SERVED : Delaware

APPEARANCE OR ANSWER DUE: Earliest Answer Date - Within 30 days after service (Document(s) may contain additional answer dates)

ATTORNEY(S) / SENDER(S): Adam Gutride
Gutride Safier LLP
835 Douglass St
San Francisco, CA 94114
415-271-6469

ACTION ITEMS: CT has retained the current log, Retain Date: 03/18/2014, Expected Purge Date: 03/23/2014
Image SOP
Email Notification, Kelli Morrow Kelli.morrow@kcc.com
Email Notification, Karon Faught Karon.faught@kcc.com

SIGNED: The Corporation Trust Company
PER: Gretchen McDougal
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 302-658-7581

Work Order



76551.86747
Number 3 of 3

650-697-9431

b4.LIANA SOLOMON

Received:	03/13/14	Type of Service:	Normal	Special:	No
Client:	GUTRIDE SARIER LLP	Client ID:	7896390		
Attention:	+KRISTEN SIMPLICIO	Fax:	415-449-6469	Phone:	415-336-6545
Address 1:	835 DOUGLASS STREET	Attorney File No:	DAVIDSON V. KIMBERLY-CLARK		
City, State Zip:	SAN FRANCISCO, CA 94114				
Plaintiff	JENNIFER DAVIDSON, ET AL				
Defendant	KIMBERLY-CLARK CORPORATION; ET AL	Case Number:	CGC-14-537962		
Representing:	Plaintiff	Court:	SAN FRANCISCO COUNTY SUPERIOR COURT, UNLIMITED JURISDICTION, Department: 610		
Hearing Date:	08/13/14	10:30AM	Status:	03/22/14	Last Day to Serve: 07/23/14
Serve Docs To:	KIMBERLY-CLARK GLOBAL SALES LLC C/O THE CORPORATION TRUST COMPANY(
Description:	Race: __, Sex: __, Age: __, Hair: __, Eyes: __, Height: __, Weight: __				
Addresses:	<u>Business, 03/13/14</u> 1209 ORANGE STREET WILMINGTON, DE 19801				
Documents:	SUMMONS AND COMPLAINT; CIVIL CASE COVER SHEET; ADR INFORMATION PACKAGE; BLANK STIPULATION FOR ADR; BLANK CASE MANAGEMENT STATEMENT; EARLY SETTLEMENT PROGRAM PAMPHLET				

Loc	Date	Time	Server	Code	Comments

Manner: ☐ [B] served via fed ex overnight ☐ [F] filing ☐ [I] E-mail ☐ [L] Legal Delivery
☐ [D] Service via facsimile ☐ [G] Registered Mail ☐ [J] ☐ [N] Posting, Mailing, & Leaving
☐ [E] ☐ [H] served via TBS overnight ☐ [K] e-mail and fed ex ☐ [P] Personal Service

Date Served: ____ / ____ / ____ **Time Served:(Military)** ____ **Served By:** ____

Served At: ____ [H]ome, [B]usiness, or [U]sual Place of Mailing ____ [X] For Changes Above in Address Boxs.

(3.b.)Person Served ____ **Witness Fees: \$** ____

Race: __, **Sex:** __, **Age:** __, **Hair:** __, **Eyes:** __, **Height:** __, **Weight:** __

Relationship ____ **(3.b.)By Leaving Copies With** ____

Mailed From ____ **Mailed Date** ____ **Time** ____

76551.86747

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

**KIMBERLY-CLARK CORPORATION; KIMBERLY-CLARK
WORLDWIDE, INC.; KIMBERLY-CLARK GLOBAL SALES LLC**

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Jennifer Davidson

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la Información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco Superior Court

400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CGC-14-537962

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Adam Gutride, Kristen Simplicio Gutride Safier LLP, 835 Douglass St, SF, CA 94114 (415) 639-9090

DATE: 3/13/2014
(Fecha)

CLERK OF THE COURT

Clerk, by
(Secretario)

Deborah Stepp, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify): Kimberly-Clark Corporation
KimberlyClark Worldwide Inc.; Kimberly-Clark Global Sales LLC
3. ☒ on behalf of (specify):
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

ENDORSED
FILE VIA FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT
CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Adam Gutride, Esq. (SBN 181446) Seth Safier, Esq. (SBN 197427) Kristen Simplico, Esq. (SBN 263291) Gutride Safier LLP 835 Douglass Street, San Francisco, CA 94114 TELEPHONE NO.: (415) 639-9090 FAX NO.: (415) 449-6469 ATTORNEY FOR (Name): Plaintiff Jennifer Davidson		2014 MAR 13 AM 11:43 CLERK OF THE COURT BY: _____ DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister St. MAILING ADDRESS: 400 McAllister St. CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: San Francisco Superior Court		
CASE NAME: Davidson v. Kimberly-Clark Corporation, Et Al		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPD/WD (23) Non-P/DPD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): four (4)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 13, 2014

Kristen G. Simplico

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ENDORSED
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SUPERIOR COURT
COUNTY OF SAN FRANCISCO
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9 Attorneys for Plaintiff

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 JENNIFER DAVIDSON, an individual, on behalf of
13 herself, the general public and those similarly situated

14 Plaintiff,

15 v.

16 KIMBERLY-CLARK CORPORATION; KIMBERLY-
17 CLARK WORLDWIDE, INC.; KIMBERLY-CLARK
18 GLOBAL SALES LLC; AND DOES 1 THROUGH 50

19 Defendants

CGC-14-537962
CASE NO.

UNLIMITED CIVIL CASE

CLASS ACTION COMPLAINT
FOR VIOLATION OF THE
CALIFORNIA CONSUMERS
LEGAL REMEDIES ACT;
FALSE ADVERTISING;
FRAUD, DECEIT, AND/OR
MISREPRESENTATION; AND
UNFAIR BUSINESS
PRACTICES

JURY TRIAL DEMANDED

FILE VIA FAX

1 Jennifer Davidson, by and through her counsel, brings this Class Action Complaint
2 against Defendants Kimberly-Clark Corporation, Kimberly-Clark Worldwide, Inc., and
3 Kimberly-Clark Global Sales, LLC on behalf of herself and those similarly situated, for violations
4 of the Consumer Legal Remedies Act, false advertising, unfair trade practices, and fraud, deceit
5 and/or misrepresentation. The following allegations are based upon information and belief,
6 including the investigation of Plaintiff's counsel, unless stated otherwise.

7 INTRODUCTION

8 1. Defendants deceptively market several lines of personal hygiene moistened wipes
9 ("wipes") as "flushable." They charge a premium for these wipes, as compared to both toilet
10 paper and to wipes that are not marketed as "flushable." In fact, the allegedly "flushable" wipes
11 are not suitable for disposal by flushing down a toilet as they routinely damage or clog pipes,
12 septic systems, and sewage pumps; they do not disperse, disintegrate, or biodegrade like toilet
13 paper; and they are not regarded by municipal sewage systems as appropriate to flush down a
14 toilet. Defendants do not disclose any of these facts. Thus, Defendants mislead consumers into
15 believing that the products are suitable for disposal by flushing down a toilet and into paying a
16 premium price for the products that they would not otherwise pay. Defendants' actions also
17 cause significant harm to municipal wastewater treatment systems. Defendants obtained
18 substantial profits from these deceptive sales. This action seeks to require Defendants to pay
19 restitution and damages to purchasers of the wipes, to remove the word "flushable" from their
20 packaging and marketing, and to affirmatively inform purchasers that the wipes are not suitable
21 for flushing down a toilet.

22 PARTIES

23 2. Jennifer Davidson ("Plaintiff") is, and at all times alleged in this Class Action
24 Complaint was, an individual and a resident of San Francisco, California.

25 3. Defendant Kimberly-Clark Corporation is a corporation incorporated under the
26 laws of the Delaware, having principal places of business in Neenah, Wisconsin.

27 4. Defendant Kimberly-Clark Worldwide, Inc. is a corporation incorporated under
28 the laws of the Delaware, having principal places of business in Irving, Texas and Neenah,

1 Wisconsin.

2 5. Defendant Kimberly-Clark Global Sales, LLC is a corporation incorporated under
3 the laws of the Delaware, having principal places of business in Irving, Texas.

4 6. The true names and capacities of Defendants sued as Does 1 through 50 inclusive
5 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names pursuant to
6 section 474 of the California Code of Civil Procedure. Plaintiff will seek leave of Court to amend
7 this Class Action Complaint when said true names and capacities have been ascertained.

8 7. The Parties identified in paragraphs 3-5 of this Class Action Complaint are
9 collectively referred to hereafter as "Defendants" or "Kimberly-Clark."

10 8. At all times herein mentioned, each of the Defendants was the agent, servant,
11 representative, officer, director, partner or employee of the other Defendants and, in doing the
12 things herein alleged, was acting within the scope and course of his/her/its authority as such
13 agent, servant, representative, officer, director, partner or employee, and with the permission and
14 consent of each Defendant.

15 9. At all times herein mentioned, Defendants, and each of them, were members of,
16 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
17 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

18 10. At all times herein mentioned, the acts and omissions of Defendants, and each of
19 them, concurred and contributed to the various acts and omissions of each and all of the other
20 Defendants in proximately causing the injuries and damages as herein alleged.

21 11. At all times herein mentioned, Defendants, and each of them, ratified each and
22 every act or omission complained of herein. At all times herein mentioned, the Defendants, and
23 each of them, aided and abetted the acts and omissions of each and all of the other Defendants in
24 proximately causing the damages, and other injuries, as herein alleged.

25 **JURISDICTION AND VENUE**

26 12. This action is brought by Plaintiff pursuant, *inter alia*, to the California Business
27 and Professions Code, section 17200, *et seq.* Plaintiff and Defendants are "persons" within the
28 meaning of the California Business and Professions Code, section 17201.

13. The injuries, damages and/or harm upon which this action is based, occurred or arose out of activities engaged in by Defendants within, affecting, and emanating from, the State of California.

14. Defendants have engaged, and continue to engage, in substantial and continuous business practices in the State of California, including in San Francisco County.

15. In accordance with California Civil Code Section 1780(d), Plaintiff concurrently files herewith a declaration establishing that, in 2013, she purchased at least one Kimberly-Clark product in San Francisco. (Plaintiff's declaration is attached hereto as Exhibit A.)

16. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

SUBSTANTIVE ALLEGATIONS

(1) Defendants Market and Sell “Flushable” Wipes

17. Defendants are manufacturers and marketers of consumer product goods, particularly paper products, including toilet paper, tissues, paper towels, feminine hygiene products, diapers, and baby wipes. Their products are widely available for purchase in supermarkets, drug stores, and other retailers. Among their biggest brands are Kleenex, Scott, Huggies, and Kotex. Other brands include Viva, Thick & Thirsty, Poise, Depends, and Cottonelle.

18. Among the products manufactured by Defendants are a variety of pre-moistened cloths, known as wet wipes, wipes, or moist towelettes, that can be used for personal hygiene, child care needs, pet care, or cleaning. This case focuses on four such pre-moistened cloths manufactured and marketed by Kimberly-Clark. These products are:

- a. Kleenex® Cottonelle® Fresh Care Flushable Wipes & Cleansing Cloths (“Cottonelle Wipes”)
- b. Scott Naturals® Flushable Moist Wipes (“Scott Wipes”)
- c. Huggies® Pull-Ups® Flushable Moist Wipes (“Huggies Wipes”)
- d. U by Kotex® Refresh flushable wipes (“Kotex Wipes”)

In this complaint, these products will be collectively referred to as the “Flushable Wipes.”

19. Through the use of intentional misrepresentations and selective omissions,

1 Defendants deceptively mislead consumers to believe that these products are in fact flushable.
2 None of the products are safe and appropriate for flushing down a toilet, as the "Flushable Wipes"
3 do not disintegrate or disperse quickly like toilet paper. Rather, even under optimal, lab-simulated
4 conditions, the Flushable Wipes take hours to begin to break down.

5 20. Specifically, as a result of the slow dispersement process, the Flushable Wipes,
6 when subjected to ordinary, consumer use, routinely (1) clog pipes; (2) do not properly break
7 down properly in septic tanks and cause damage septic pumps; and (3) cause blockages and
8 damage to municipal sewage lines and pumps, often due to proclivity of the Flushable Wipes to
9 tangle with each other, tree branches, rocks, and other non-flushable items, and form large masses
10 or ropes.

11 **(1)(a) All of Defendants' Flushable Wipes Are Deceptively Advertised As "Flushable"**

12 21. All of the Flushable Wipes packages state that the product is "flushable" but the
13 Flushable Wipes are not, in fact, suitable for flushing down a toilet.

14 22. As defined by Webster's Dictionary, "Flushable" means "suitable for disposal by
15 flushing down a toilet."

16 23. Many objects and materials theoretically will pass from the toilet to the pipes after
17 one flushes, such as food scraps, jewelry, small toys, or cotton swabs, but that does not make such
18 objects or materials "flushable." Rather, the word "flushable" means in reasonable usage not just
19 that the object or material will pass from the toilet to the pipes, but that the object or material is
20 *appropriate or suitable* to flush down a toilet for purposes of passing into the sewer or septic
21 system. For example, the Merriam-Webster dictionary gives the following as the sole definition
22 of "flushable: *suitable* for disposal by flushing down a toilet." See [http://www.merriam-](http://www.merriam-webster.com/dictionary/flushable)
23 [webster.com/dictionary/flushable](http://www.merriam-webster.com/dictionary/flushable), last visited Feb. 27, 2014 (emphasis added).

24 24. The Water Environment Federation (WEF), a nonprofit association of water
25 quality professionals, has explained how Defendants are misusing the word "flushable":

26 The industry reference for dispersability is two-ply toilet paper ... [which] starts
27 to break apart when the toilet is flushed and is indistinguishable in the wastewater
28 system in a matter of seconds...Anything labeled as flushable should start to
break apart during the flush and completely disperse within 5 minutes... Our
mantra is, 'It's not flushable if it's not dispersible' ...

1 See <http://news.wef.org/stop-dont-flush-that/> (last accessed February 26, 2014) (internal
2 quotations omitted). WEF further reports that consumers flush nondispersible wipes because they
3 are “mislabeled” as “flushable,” when they do not disperse like toilet paper. *Id.*

4 25. Municipal water facilities and water protection organizations, and related
5 associations are in agreement with WEF that the only product other than human excrement
6 suitable for disposal down a toilet is toilet paper. For example, the California Association of
7 Sanitation Agencies has stated:

8 Many personal hygiene wipes and cleaning products are marketed as being
9 “flushable.” But despite the confusing and misleading labels you should never
10 flush “flushable” or “disposable” products. No matter what a label says, the only
11 items you should flush are human waste and toilet paper. Just because something
12 disappears down your toilet doesn’t mean it won’t cause a problem in your sewer
13 pipe—or further down the line at wastewater treatment facilities. Items labeled as
14 “flushable” or “disposable” (even “bio-degradable” ones) can get caught on roots
15 in sewer pipes and contribute to blockages, back-ups, and overflows.

16 Dispose of them in the trash, not the toilet!

17 See <http://www.casaweb.org/flushable-wipes> (last accessed February 24, 2014).

18 26. San Francisco Public Utilities Commission officials have stated that with the
19 exception of toilet paper and human waste, “Everything else should go in the trash” and should
20 not be flushed. See [http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-](http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283)
21 [backups-at-local-sewage-plants/Content?oid=2514283](http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283) (last accessed February 24, 2014).

22 27. The East Bay Municipal Utility District states:

23 **Non-Flushable Wipes and Products**

24 *No matter if the label says “disposable” or “flushable,” cleaning and personal*
25 *hygiene products should never be flushed.*

26 “Disposable” or “flushable” wipes and other products don’t breakdown in the
27 sewer. Instead, they get tangled and clumped in hair and debris creating massive
28 obstructions in the sewers. **Remember... your toilet is not a trash can!**

See [https://www.ebmud.com/water-and-wastewater/pollution-prevention/residential-pollution-](https://www.ebmud.com/water-and-wastewater/pollution-prevention/residential-pollution-prevention)
prevention (last accessed February 26, 2014).

28 28. The City of Carlsbad Wastewater Superintendent Don Wasko has stated:

They may be called flushable, but they can do severe damage to our sewer system
... These cloth wipes don’t break down in the sewer system the same way that

1 toilet paper does.

2 See <http://news.carlsbadca.gov/news/flushable-wipes-and-other-things-you-should-not-flush> (last
3 accessed February 24, 2014).

4 29. Wastewater treatment utilities outside of California have issued similar statemetns.
5 For example, in Contra Costa, Colorado, the Central Contra Costa Sanitary District has said that
6 the wipes are not flushable, and rather, "The reason they're a problem is that they don't break
7 down as quickly as toilet paper and that's really the standard for flush-ability, as far as we're
8 concerned." See [http://sanfrancisco.cbslocal.com/2013/07/17/cleaning-wipes-used-in-homes-and-](http://sanfrancisco.cbslocal.com/2013/07/17/cleaning-wipes-used-in-homes-and-offices-clogging-bay-area-sewer-pipes/)
9 [offices-clogging-bay-area-sewer-pipes/](http://sanfrancisco.cbslocal.com/2013/07/17/cleaning-wipes-used-in-homes-and-offices-clogging-bay-area-sewer-pipes/) (last accessed February 24, 2014).

10 30. Similarly, Pima County, Arizona, issued a release that stated that, "Unfortunately,
11 disposable wipes are rarely, if ever, biodegradable in the sanitary sewer system. They just aren't
12 in there long enough to break down." See [http://www.insidetucsonbusiness.com/blogs/save-](http://www.insidetucsonbusiness.com/blogs/save-yourself-stop-flushing-flushable-wipes/article_e4db48de-312f-11e3-843e-001a4bcf887a.html)
13 [yourself-stop-flushing-flushable-wipes/article_e4db48de-312f-11e3-843e-001a4bcf887a.html](http://www.insidetucsonbusiness.com/blogs/save-yourself-stop-flushing-flushable-wipes/article_e4db48de-312f-11e3-843e-001a4bcf887a.html)
(last accessed February 24, 2014).

14 31. Despite the fact that wastewater treatment professionals and municipalities are in
15 broad agreement that Defendants' Flushable Wipes are not suitable for flushing down a toilet
16 because it does not disperse like toilet paper and causes damage to pipes, septic tanks, and sewage
17 systems, Defendants market and advertise the Flushable Wipes in a way that is inconsistent with
18 this accepted definition of "flushable."

32. For example, on the front of the Cottonelle Wipes package, Defendants advertise the product as “FLUSHABLE MOIST WIPES” or as “flushable cleansing cloths.”

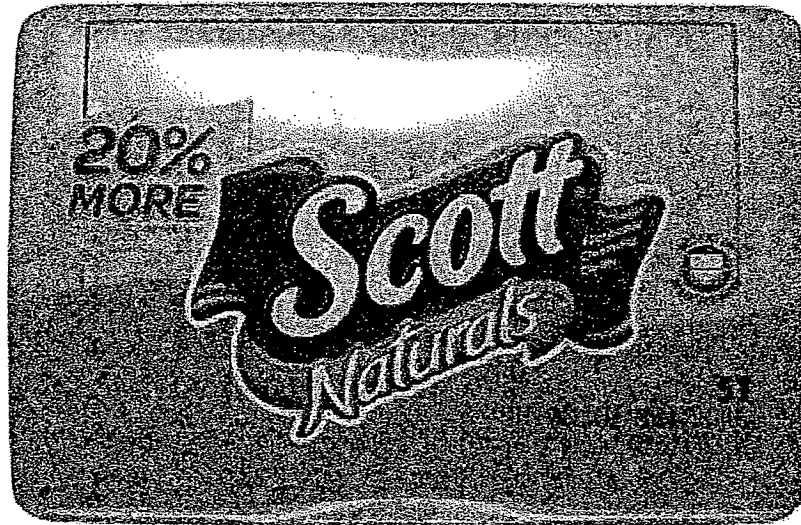


One of the packages falsely represents that the wipes are “SEWER AND SEPTIC SAFE.*” No disclaimer appears to be associated with the asterisk. On the back of the package, Defendants falsely represent that “Cottonelle Fresh Care Flushable Cleansing Cloths break up after flushing.” On the backs of some packages of the Cottonelle Wipes, Defendants further state, “For best results, flush only one or two cloths at a time,” but this warning does not appear on all packages, such as the smaller, travel size package of wipes. Nowhere on the package do Defendants disclose that the wipes are not suitable for disposal by flushing down a toilet, and rather, are not

1 regarded as flushable by municipal sewage systems as the Flushable Wipes routinely damage or
 2 clog pipes, septic systems, and sewage pumps and do not disperse, disintegrate, or biodegrade like
 3 toilet paper.

4 33. On the website for the Cottonelle Wipes, Defendants falsely inform consumers
 5 that the “flushable wipes use a patented dispersible technology, which means that when used as
 6 directed they break up after flushing and clear properly maintained toilets, drainlines, sewers,
 7 pumps, and septic and municipal treatment systems.” *See*
 8 <https://www.cottonelle.com/products/cottonelle-fresh-care-flushable-moist-wipes#faqs> (last
 9 accessed February 6, 2014). The website goes on to claim that the Cottonelle Wipes are
 10 “Flushable”, “Break up after flushing”, and are “Sewer- and septic-safe.” *Id.* Nowhere on the
 11 Cottonelle Wipes website do Defendants disclose that the wipes are not suitable for disposal by
 12 flushing down a toilet, and rather, are not regarded as flushable by municipal sewage systems as
 13 the Flushable Wipes routinely damage or clog pipes, septic systems, and sewage pumps and do
 14 not disperse, disintegrate, or biodegrade like toilet paper.

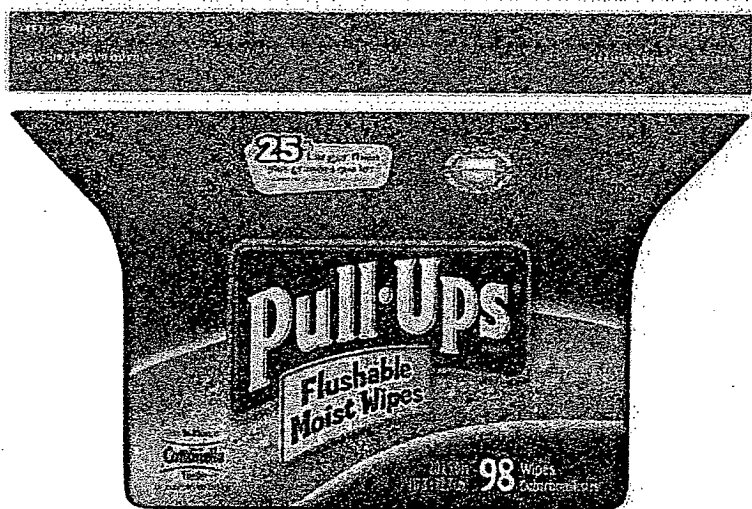
15 34. On the front of the Scott Wipes package, Defendants advertise the product as
 16 “Flushable Cleansing Cloths” and falsely represent that the wipe “breaks up after flushing.”



27 On the back of the package, Defendants further mislead consumers by informing them that “Scott
 28 Naturals* Flushable Cleansing Cloths break up after flushing and are sewer and septic system

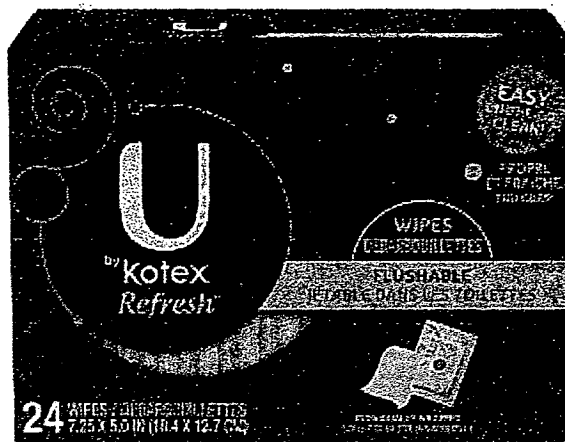
1 safe. For best results, flush only one or two cleansing cloths at a time.” No disclaimer appears to
 2 be associated with the asterisk. The back of the package also falsely informs the consumer that
 3 the “flushable” cloth is “Septic Safe” and “Breaks up after flushing.” Nowhere on the package do
 4 Defendants disclose that the wipes are not suitable for disposal by flushing down a toilet, but
 5 rather, are not regarded as flushable by municipal sewage systems as they routinely damage or
 6 clog pipes, septic systems, and sewage pumps; and do not disperse, distingrate, or biodgrade like
 7 toilet paper.

8 35. On the front of the Huggies Wipes package, Defendants misleadingly describe the
 9 product as “flushable moist wipes.”



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 20 On the back, Defendants falsely represent that the wipes are “Septic Safe” and “Breaks up after
 21 flushing,” and only advise “For best results, flush only one or two wipes at a time.” On the
 22 website for the Huggies Wipes, Defendants claim the wipes are “sewer and septic safe and break
 23 up quickly after flushing.” Nowhere on the package or website do Defendants disclose that the
 24 wipes are not suitable for disposal by flushing down a toilet, and rather, are not regarded as
 25 flushable by municipal sewage systems; routinely damage or clog pipes, septic systems, and
 26 sewage pumps; and do not disperse, distingrate, or biodgrade like toilet paper.

27 36. On the front of the Kotex Wipes package, Defendants represent that the product is
 28 “flushable.”



Defendants provide little additional information on the back, only reiterating that the product is “Flushable!” Nowhere on the package do Defendants disclose that the wipes are not suitable for disposal by flushing down a toilet, and rather, are not regarded as flushable by municipal sewage systems; routinely damage or clog pipes, septic systems, and sewage pumps; and do not disperse, disintegrate, or biodegrade like toilet paper.

37. In marketing products to be used as part of a bathroom routine (Cottonelle Wipes and Scott Wipes), as part of feminine hygiene (Kotex Wipes), and as part of potty training (Huggies Wipes), Defendants know that consumers will be more likely to purchase the product in addition to, or instead of, toilet paper if they believed the product could be flushed down the toilet. Thus, for all the Flushable Wipes, Defendants intend for consumers to rely on the fact that the representation that the product is “Flushable.” Defendants further intend for consumers to rely on the omissions that the Flushable Wipes are not suitable for disposal by flushing down a toilet, and that the wipes are not regarded as flushable by municipal sewage systems; routinely damages or clogs pipes, septic systems, and sewage pumps; and do not disperse, disintegrate, or biodegrade like toilet paper.

38. To induce consumers into relying on the false representation that the wipes are “flushable,” Defendants’ ad campaigns routinely inform consumers that the Flushable Wipes are

1 a useful part of good bathroom habit. For example, Defendants have run an advertising campaign
2 entitled "Let's Talk About Your Bum," consisting of a webpage and various commercials. The
3 campaign tells consumers that "bums deserve the ultimate in fresh and clean," and the
4 commercials encourage consumers to use the Flushable Wipes in the bathroom. Similarly,
5 Defendants ran another commercial that featured a woman holding up both toilet paper and
6 Cottonelle Wipes, while her family debated whether the routine of using both in the bathroom
7 should be called "Southern hospitality," the "clean getaway" or the "freshy fresh." The result is
8 that consumers believe that the wipes are flushable like toilet paper, when in fact, they are not
9 suitable for flushing down a toilet.

10 39. Defendants' marketing campaign has been extremely successful. In 2007,
11 Defendants reported to investors that sales for Defendants' Cottonelle and Scott flushable wipes
12 "continued to grow at a strong double-digit rate." *See* [http://www.cms.kimberly-](http://www.cms.kimberly-clark.com/umbracoimages/UmbracoFileMedia/2007%20Annual%20Report_umbracoFile.pdf)
13 [clark.com/umbracoimages/UmbracoFileMedia/2007%20Annual%20Report_umbracoFile.pdf](http://www.cms.kimberly-clark.com/umbracoimages/UmbracoFileMedia/2007%20Annual%20Report_umbracoFile.pdf)
14 (last accessed February 24, 2014). And sales of consumer wipes have increased nearly 5 percent
15 a year since they were introduced in 2007, and that rate is expected to grow. *See*
16 [http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs)
17 [clogs](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs) (last accessed February 24, 2014). In 2012, the "flushable wipes" market accounted for
18 14% of the \$4 billion a year pre-moistened wipes market, and it is predicted that the market will
19 grow six percent a year for the next few years. *See*
20 [http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html)
21 [sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html) (last
22 accessed February 24, 2014).

23 40. As a result of Defendants deceptive advertising, consumers believe that because
24 the Flushable Wipes disappear when flushed down the toilet, they are "flushable," when in fact
25 the Flushable Wipes do not disperse like toilet paper, and by flushing the Flushable Wipes,
26 consumers risk damaging pipes, septic tanks, and sewage systems.

27 41. Because customers believe the wipes are suitable for flushing down a toilet and
28 purchase them for that convenience, Defendants are able to charge a premium for the Flushable

1 Wipes. For example, a 42-count package of Cottenelle Wipes costs \$4.99 at a Target in Albany,
2 California, whereas a 40-count package of Wet Ones, a popular brand of non-flushable wipes,
3 costs \$2.29. A 51-count package of Scott Wipes retails for \$6.01 on Amazon.com, also
4 considerably more than the Wet Ones, which sell for \$2.28 on that website.

5 42. Similarly, a 24 count package of Kotex Wipes retails for \$4.28 on Amazon.com,
6 whereas a 40 count package of Always® Clean Feminine Wipes, a non-flushable wipe, retails on
7 Amazon.com for \$3.27. And the Kotex Wipes are significantly more expensive than the non-
8 flushable Wet Ones.

9 43. A consumer can buy 420 Huggies Wipes for \$22.49 on Amazon.com. In contrast,
10 a 448 Huggies Soft Skin Baby Wipes, a non-flushable product manufactured by Defendants, sells
11 for \$11.97, half the cost of the “flushable” Huggies Wipes. Other non-flushable baby wipes are
12 similarly much lower priced. For example, a 448 count box of Pampers® Sensitive Wipes sells
13 for \$10.97 on Amazon.com. A 350 count package of the non-flushable Seventh Generation®
14 “Original Soft and Gentle Free & Clear Baby Wipes” sells for \$12.99 on Amazon.com.

15 44. If consumers knew that the Flushable Wipes were not suitable for flushing down a
16 toilet, they would not pay a premium, but rather, would opt to purchase the cheaper, non-
17 flushable items.

18 **(1)(b) All of Defendants’ Wipes Are Manufactured And Packaged the Same Way**

19 45. The Flushable Wipes are all manufactured using the same proprietary paper blend,
20 for which Defendants own the patent. To manufacture the paper, Defendants use an “air-laid”
21 process, which creates strong knots of fibers that will not break down easily when submersed in
22 water. Defendants tout the benefits of their paper, claiming that their patented dispersible
23 technology allows them to be strong in the package and durable for wiping, but to break up after
24 flushing and to clear properly maintained toilets, drain-lines, sewers, pumps, and septic and
25 municipal treatment systems. See [http://www.kimberly-](http://www.kimberly-clark.com/safetoflush/faq/SafeToFlushFAQ.pdf)
26 [clark.com/safetoflush/faq/SafeToFlushFAQ.pdf](http://www.kimberly-clark.com/safetoflush/faq/SafeToFlushFAQ.pdf) (last accessed February 24, 2014.) In reality, the
27 paper is not suitable for flushing down a toilet, since it does not break up after flushing, and
28 routinely clogs pipes and pumps.

1 46. A consumer who purchases the Flushable Wipes will find, upon opening the
2 package, sheets of moist paper, dampened by a coating of wet lotion. Unlike toilet paper, which
3 is a dry paper product designed to fall apart in water, all of the Flushable Wipes are sold as pre-
4 moistened products, and thus, the paper used to make them is designed to withstand months of
5 soaking in a wet environment. Because weeks, months, or longer will pass between the time the
6 Flushable Wipe is manufactured and the time at which it is ultimately used by a consumer, the
7 paper used to manufacture the wipes must be strong enough to sit in a still, wet environment for
8 extremely long periods of time. Thus in creating the paper used to manufacture their Flushable
9 Wipes, Defendants must first consider whether the paper is strong enough to withstand months of
10 soaking in wet environment, suggesting that the wipes cannot possibly efficiently disperse when
11 placed in more water.

12 **(1)(c) All Defendants' Wipes Are Subject To The Same Flawed Test**

13 47. For consumers looking for more information on whether their products are truly
14 flushable, Defendants have created a Frequently Asked Questions page on their website. There,
15 they deceptively inform consumers all the Flushable Wipes "are labeled as flushable meet or
16 exceed the current industry guidelines for assessing the flushability of non-woven products." See
17 <http://www.kimberly-clark.com/safetoflush/faq/SafeToFlushFAQ.pdf> (last accessed February 6,
18 2014).

19 48. The "industry guidelines" that Defendants claim their Flushable Wipes satisfy are
20 set by INDA, a lobbying association for manufacturers of flushable wipes, like Defendants.
21 INDA fights aggressively against governmental efforts to regulate the sale of flushable wipes or
22 use of the word "flushable". The non-mandatory INDA guidelines encourage manufacturers of
23 flushable wipes to conduct a series of seven tests before labelling their products as "flushable."
24 Closer look at those tests reveals flaws in their design and demonstrates that merely passing these
25 self-serving guidelines does not mean the wipes are flushable.

26 49. For example, Defendants note that their product passes test "FG502" known as the
27 "Slosh Box Disintegration Test." According to Defendants' website, the test "[a]ssesses the
28 potential for a product to disintegrate (or break up) when it is subjected to mechanical agitation in

1 water.” See <http://www.kimberly-clark.com/safetoflush/faq/SafeToFlushFAQ.pdf> (last accessed
 2 February 24, 2014). To conduct the test, the test material is placed in a box of water. Testers
 3 then agitate the water, often by simulating the swirl of a toilet flush or the movement of water in a
 4 pipe, and time how long it takes for the test material to disintegrate. Defendants and INDA have
 5 agreed that the standard for “passing” this test is not whether the product mimics the easily
 6 flushable and dispersible toilet paper or even that the product will break down during a flush.
 7 Rather, the test only requires that after **three hours of agitation** in the slosh box, more than 25%
 8 of the wipe passes through a 12.5 millimeter (roughly a half inch) sieve **80%** of the time. See
 9 [http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf)
 10 [nonwoven-product.pdf](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf) (last accessed February 24, 2014) (emphasis added). In other words, the
 11 test is still *passed even if after more than three hours of agitation, nearly three-quarters of the*
 12 *material is unable to pass through the pipe.*

13 50. When subject to the Slosh Box Disintegration Test, a typical piece of toilet paper
 14 begins to break down as soon as the water in the slosh box begins to move, and is completely
 15 disintegrated within in a few seconds. See [http://www.consumerreports.org/cro/video-hub/home--](http://www.consumerreports.org/cro/video-hub/home--garden/bed--bath/are-flushable-wipes-flushable/16935265001/22783507001/)
 16 [garden/bed--bath/are-flushable-wipes-flushable/16935265001/22783507001/](http://www.consumerreports.org/cro/video-hub/home--garden/bed--bath/are-flushable-wipes-flushable/16935265001/22783507001/) (last accessed
 17 February 21, 2014). Thus, when flushed down a toilet, toilet paper will likely break into particles
 18 within seconds after flushing. (Id.) In comparison, the Flushable Wipes do not even begin to
 19 disintegrate quickly. (Id.) Rather, Defendants’ own website reveals that the begin to break down
 20 in 35 minutes, and take hours to completely disperse. See [http://www.kimberly-](http://www.kimberly-clark.com/newsroom/media_resources/safetoflush.aspx?print=true)
 21 [clark.com/newsroom/media_resources/safetoflush.aspx?print=true](http://www.kimberly-clark.com/newsroom/media_resources/safetoflush.aspx?print=true) (last accessed February 21,
 22 2014). Despite not dispersing like toilet paper, Defendants advertise and sell a wipe “flushable”
 23 even if most of it is still in tact after hours of agitation.

24 51. While Defendants represent that the wipes’ rate of disintegration roughly mimic
 25 the amount of time it takes for a wipe to reach the sewage treatment plant, wastewater utility
 26 officials say that wipes can reach a sewage treatment pump in much less time, sometimes as
 27 quickly as a few minutes. See
 28 <http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging->

1 sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html (last
2 accessed February 24, 2014). Further, the moist lotion used in manufacturing the wipes results in
3 them traveling faster through sewer pipes than ordinary products. *See*
4 [http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-](http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-san-11718265/)
5 [san-11718265/](http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-san-11718265/) (last accessed February 26, 2014).

6 52. Because the wipes are always intact after a few minutes, and largely intact even
7 after hours of agitation, they arrive at the sewage treatment pump intact, where they create the
8 problems described in paragraphs 57-68.

9 53. Nearly all the tests are further flawed as they do not simulate real-world
10 conditions. Sewer systems typically move sewage to the plant via gravity. (Id.) The flowing
11 water is not as hard on the wipes as the agitating water in some of Defendants' tests, meaning that
12 they will not break down as quickly in the pipes as they do in Defendants' lab simulated tests.
13 (Id.) For example, both the Slosh Box test described in paragraph 49 and FG505, the "Aerobic
14 Biodisintegration" test, assess the wipes' abilities to disintegrate under constantly agitated water.
15 *See* [http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf)
16 [nonwoven-product.pdf](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf) (last accessed February 24, 2014). Since the Flushable Wipes are unlikely
17 to be subjected to the same agitating water as they are subjected to in Defendants' lab, the tests
18 are not reliable predictors of whether the Flushable Wipes are suitable for flushing down a toilet.
19 The result is that many of the Flushable Wipes arrive at the sewage treatment plant in tact or
20 insufficiently broken down.

21 54. The tests are further flawed in that they fail to take into account the wipes
22 propensity for "ragging." After being flushed down the toilet, the Flushable Wipes have a
23 propensity to tangle amongst one another and with other debris, and form long ropes that can fill
24 sewer lines for tens of feet. *See*
25 [http://www.hsconnect.com/page/content.detail/id/590706/Concerns-on-wipes-no-laughing-](http://www.hsconnect.com/page/content.detail/id/590706/Concerns-on-wipes-no-laughing-matter.html?nav=5005)
26 [matter.html?nav=5005](http://www.hsconnect.com/page/content.detail/id/590706/Concerns-on-wipes-no-laughing-matter.html?nav=5005) (last accessed February 24, 2014). The tests however, assume that wipes
27 are passing through pipes and pumps one at a time, instead of in clumps of rags and ropes. For
28 example, while the Slosh Box Disintegration Test only considers what one wipe will do, there

1 will often be multiple wipes in a pipe at a time. The bigger the mass of wipes, the slower the
2 disintegration time. See [http://www.washingtonpost.com/local/trafficandcommuting/flushable-](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html)
3 [personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html)
4 [b47e45e6f8ef_story.html](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html) (last accessed February 24, 2014).

5 55. The test FG507, the Municipal Pump Test, which evaluates the wipes'
6 "compatibility" with municipal pumping systems, is flawed for the same reason. To conduct that
7 test, Defendants simply feed one wipe into the pump every ten seconds. See
8 http://www.kimberly-clark.com/newsroom/media_resources/safetoflush.aspx (last accessed
9 February 24, 2014). Because the wipes will likely entangle with other wipes and debris, the test
10 is a poor predictor of the wipes "compatibility" with municipal pumping systems.

11 **Because the Flushable Wipes Are Not Suitable For Flushing Down a Toilet, They Wreck**
12 **Havoc On Municipal Sewage Treatment Facilities**

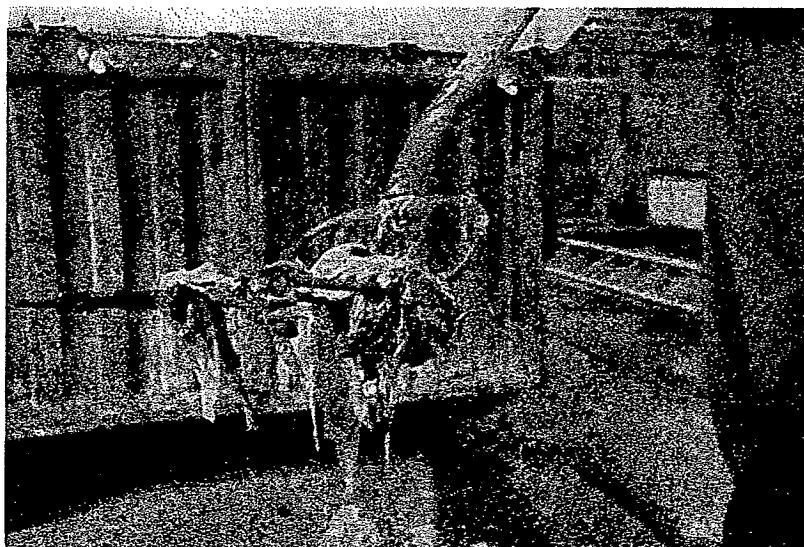
13 56. Municipalities all over the country have experienced numerous problems from
14 Defendants' Flushable Wipes.

15 57. In Bakersfield, California, crews of three or four workers must regularly visit the
16 city's 52 sewage lift stations to cut up the balls of wipes that clog the lift stations. If they do not,
17 there is a risk that back flow damage will spill inside homes. Mike Connor, Street Superintendent at
18 Public Works in Bakersfield has stated "There's no safe brand for disposables, none of them
19 break down." See [http://www.turnto23.com/news/local-news/bakersfield-sewer-systems-keep-](http://www.turnto23.com/news/local-news/bakersfield-sewer-systems-keep-getting-clogged-because-of-flushable-bathroom-wipes-092413)
20 [getting-clogged-because-of-flushable-bathroom-wipes-092413](http://www.turnto23.com/news/local-news/bakersfield-sewer-systems-keep-getting-clogged-because-of-flushable-bathroom-wipes-092413) (last accessed February 21, 2014).
21 The city has documented one of the clogs:
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9 58. In Orange County, California, the Sanitation District recorded 971 “de-ragging”
10 maintenance calls to remove wipes from ten pump stations in a single year at a cost of \$320,000.
11 [http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs)
12 [clogs](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs), last accessed February 24, 2014.

13 59. The San Francisco Public Utilities Commission has documented the pipe-clogging
14 wipes that the crews must break up:



24 [http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-](http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283)
25 [sewage-plants/Content?oid=2514283](http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283), last accessed February 24, 2014. The city spends \$160,000
26 a year to remove wipes and debris. *Id.*

27 60. In 2012, thirty percent of the sewage overflows in Contra Costa County were
28 caused by “flushable wipes.” <http://articles.chicagotribune.com/2013-10-08/news/ct-tl-1010-s->

1 tinley-park-flushables-20131009_1_baby-wipes-flushable-toilet-paper, last accessed February 24,
2 2014. At one sanitation district in Contra Costa County, workers take apart pumps approximately
3 30 times a year to detangle debris. Before flushable wipes were introduced, such repairs were
4 necessary just six times a year. See [http://www.casaweb.org/news/unwelcome-junk-keeps-sewer-](http://www.casaweb.org/news/unwelcome-junk-keeps-sewer-line-workers-busy)
5 [line-workers-busy](http://www.casaweb.org/news/unwelcome-junk-keeps-sewer-line-workers-busy) (last accessed February 26, 2014).

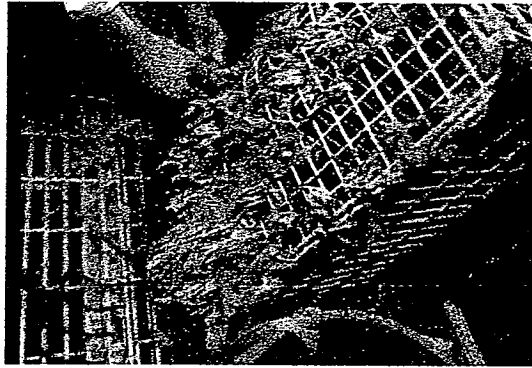
6 61. In El Dorado Hills, California, a recent sewage spill was found to be caused in
7 large part by disposable wipes. The result was not only extra maintenance costs, but the city was
8 fined by the state for the spill. See [http://www.mtdemocrat.com/news/flushable-wipes-clog-](http://www.mtdemocrat.com/news/flushable-wipes-clog-pipes-trash-them-instead/)
9 [pipes-trash-them-instead/](http://www.mtdemocrat.com/news/flushable-wipes-clog-pipes-trash-them-instead/) (last accessed February 24, 2014).

10 62. Outside of California, the story is much the same. For example, the city of
11 Vancouver, Washington, has been forced to spend more than \$1 million over the last five years to
12 respond to problems creating from the increased use of "flushable" wipes. See
13 <http://www.kctv5.com/story/23508880/flushable-wipes-clog-sewer-lines> (last accessed February
14 26, 2014). In particular, the city has spent \$810,000 on new equipment, \$140,00 on electricity
15 wasted through inefficiencies created by running clogged pumps, \$480,000 in field labor to
16 unclog pumps, and about \$100,000 in engineering and administrative support. See
17 <http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-resource-recovery-facilities/>
18 (last accessed February 26, 2014).

19 63. In Illinois, the Downers Grove Sanitary District spent \$30,000 last year to repair a
20 pump clogged by wipes, and additional \$5,000 to install vibration monitoring equipment to alert
21 staff to new blockages. See [http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-](http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-resource-recovery-facilities/)
22 [resource-recovery-facilities/](http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-resource-recovery-facilities/) (last accessed February 26, 2014). Despite this upgrade, the wipes
23 continue to accumulate in the lift station, additional equipment may need to be installed. *Id.*

24 64. Outside of Washington, D.C., the Washington Suburban Sanitary Commission has
25 spent more than \$1 million over five years installing heavy duty grinders to try to address the
26 problem. [http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs)
27 [sewer-clogs](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs), last accessed February 24, 2014. In addition, the organization has started using a
28 modified shopping cart to catch the wipes before they reach the pumps and clog equipment,

1 which arrive intact at the treatment facility:



9 65. Once at the municipal treatment plant, the wipes will clog pipes and pumps. It can
10 take hours to unclog them, and is very expensive. The city of Jacksonville Beach estimates that
11 the consumers are paying for the wipes multiple times – in plumbing costs and increased tax
12 expenditures. See [http://www.news4jax.com/news/officials-flushable-wipes-clog-pipes/-](http://www.news4jax.com/news/officials-flushable-wipes-clog-pipes/-/475880/23740904/-/t5h2vrz/-/index.html)
13 [/475880/23740904/-/t5h2vrz/-/index.html](http://www.news4jax.com/news/officials-flushable-wipes-clog-pipes/-/475880/23740904/-/t5h2vrz/-/index.html) (last accessed February 26, 2014). The city has released
14 a photo that demonstrates the extent to which the wipes have clogged the pumps:



20 *Id.*

21 66. In Hillsborough, Florida, the sewage treatment facility has hooked ropes to pumps
22 that are plagued by clogs from the wipes. Every day, teams of plant maintenance mechanics and
23 other workers remove the wipes using the hooks, so that they can cut and untangle the wipes,
24 which resemble “mop strings”, using pliers, screwdrivers, and cutters.
25 [http://www.tampabay.com/news/humaninterest/flushable-bathroom-wipes-get-blame-for-sewer-](http://www.tampabay.com/news/humaninterest/flushable-bathroom-wipes-get-blame-for-sewer-clogs/2144911)
26 [clogs/2144911](http://www.tampabay.com/news/humaninterest/flushable-bathroom-wipes-get-blame-for-sewer-clogs/2144911) (last accessed February 21, 2014).

27 67. In San Antonio, Texas, the San Antonio Water System has said that flushable
28 wipes are clogging up sewers in ways in which sewer workers have never seen before. See

1 [http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-](http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-san-11718265/)
2 [san-11718265/](http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-san-11718265/) (last accessed February 26, 2014). Sewer workers are responding to dozens of
3 clogs, and to repair, they retrieve large “rope like mass[es]” from the pipes. *Id.*

4 68. In Arkansas, the Jacksonville Wastewater Utility has found that wipes wreck the
5 most havoc on pumps, causing thousands of dollars in damages. Years ago, the town would
6 remove pump clogs once or twice a year, but since the flushable wipes have become popular
7 amongst consumers, the town must remove pump clogs several times a month. *See*
8 [http://www.arkansasmatters.com/story/wastewater-treatment-facilities-waging-war-with-](http://www.arkansasmatters.com/story/wastewater-treatment-facilities-waging-war-with-wipes/d/story/1ZNQd1uAZECshHMB5daErA)
9 [wipes/d/story/1ZNQd1uAZECshHMB5daErA](http://www.arkansasmatters.com/story/wastewater-treatment-facilities-waging-war-with-wipes/d/story/1ZNQd1uAZECshHMB5daErA) (last accessed February 26, 2014). The city spends
10 thousands a year in fixing pump clogs. *Id.*

11 69. Defendants repeatedly have insisted that these problems are caused by other non-
12 flushable products, and not their wipes. In response, Contra Costa sewer officials dyed several
13 kinds of wipes to see what happens once they enter the sewer system, and found that wipes
14 labeled “flushable” were still intact after traveling a mile through sewage pipes.
15 [http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs)
16 [clogs](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs), last accessed February 24, 2014.

17 PLAINTIFF’S EXPERIENCE

18 70. In 2013, Plaintiff desired to purchase moist wipes for household use. While
19 shopping for wipes at a Safeway store located at 2020 Market Street, San Francisco, California,
20 Plaintiff came across Defendant’s Scott Naturals® Flushable Moist Wipes. Seeing that the wipes
21 had the word “Flushable” on the front of the package and that the product was more expensive
22 than other wipes that did not have that word, she believed that the product had been specially
23 designed to be suitable for flushing down her toilet, without causing problems in her plumbing or
24 at the water treatment plant. (Several years prior to her purchase, Plaintiff had visited San
25 Francisco’s sewage treatment plant as part of a school trip, and she learned there that people
26 frequently flush things that should not be flushed, which causes many problems with the
27 wastewater treatment.) She reviewed both the front and back of the package and did not see
28 anything that would lead her to believe that the wipes were not in fact suitable for flushing.

1 Because she believed it would be easier and more sanitary to flush the wipes than to dispose of
2 them in the garbage, she decided to pay the higher price, and she purchased the Scott Wipes for a
3 few dollars.

4 71. Plaintiff began using the wipes. She noticed that each individual wipe felt very
5 sturdy and thick, unlike toilet paper. She also noticed that the wipes did not break up in the toilet
6 bowl like toilet paper but rather remained in one piece. After several uses of the wipes, she began
7 to seriously doubt that they were truly flushable. So she stopped flushing the wipes and stopped
8 using the product altogether.

9 72. Plaintiff has not purchased any of Defendants' "flushable" products since.

10 73. Had Defendants not misrepresented (by omission and commission) the true nature
11 of their "Flushable" Products, Plaintiff would not have purchased Defendants' product or, at a
12 very minimum, she would have paid less for the product since she would not be obtaining the
13 benefit of being able to flush it.

14 CLASS ALLEGATIONS

15 74. Plaintiff brings this action against Defendants on behalf of herself and all others
16 similarly situated, as a class action pursuant to section 382 of the California Code of Civil
17 Procedure and section 1781 of the California Civil Code. Plaintiff seeks to represent a group of
18 similarly situated persons (the "Class"), defined as follows:

19 All persons who, between March 13, 2010 and the present, purchased, in
20 California, any of the following products: Cottonelle® Fresh Care Flushable
21 Wipes & Cleansing Cloths, Scott Naturals® Flushable Moist Wipes, Huggies
® Pull-Ups® Flushable Moist Wipes, and U by Kotex® Refresh flushable
wipes.

22 75. This action has been brought and may properly be maintained as a class action
23 against Defendants pursuant to the provisions of California Code of Civil Procedure section 382
24 because there is a well-defined community of interest in the litigation and the proposed class is
25 easily ascertainable.

26 76. Numerosity: Plaintiff does not know the exact size of the class, but it is estimated
27 that it is composed of more than 100 persons. The persons in the class are so numerous that the
28 joinder of all such persons is impracticable and the disposition of their claims in a class action

1 rather than in individual actions will benefit the parties and the courts.

2 77. Common Questions Predominate: This action involves common questions of law
3 and fact to the potential class because each class member's claim derives from the deceptive,
4 unlawful and/or unfair statements and omissions that led Defendants' customers to believe that
5 the Non-Flushable Wipes were flushable. The common questions of law and fact predominate
6 over individual questions, as proof of a common or single set of facts will establish the right of
7 each member of the Class to recover. Among the questions of law and fact common to the class
8 are:

9 a) Whether Defendants' Flushable Wipes are suitable for flushing down a
10 toilet;

11 b) Whether Defendants unfairly, unlawfully and/or deceptively failed to
12 inform class members that their Flushable Wipes were not flushable;

13 c) Whether Defendants' advertising and marketing regarding their Flushable
14 Wipes sold to class members was likely to deceive class members or was unfair;

15 d) Whether Defendants engaged in the alleged conduct knowingly, recklessly,
16 or negligently;

17 e) The amount of revenues and profits Defendants received and/or the amount
18 of monies or other obligations lost by class members as a result of such wrongdoing;

19 f) Whether class members are entitled to injunctive and other equitable relief
20 and, if so, what is the nature of such relief; and

21 g) Whether class members are entitled to payment of actual, incidental,
22 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the
23 nature of such relief.

24 78. Typicality: Plaintiff's claims are typical of the class because, in 2013, she
25 purchased one of the Flushable Wipes, namely Defendants' Scott® Naturals Flushable Moist
26 Wipes, in reliance on Defendants' misrepresentations and omissions that they were flushable.
27 Thus, Plaintiff and class members sustained the same injuries and damages arising out of
28 Defendants' conduct in violation of the law. The injuries and damages of each class member

1 were caused directly by Defendants' wrongful conduct in violation of law as alleged.

2 79. Adequacy: Plaintiff will fairly and adequately protect the interests of all class
3 members because it is in her best interests to prosecute the claims alleged herein to obtain full
4 compensation due to her for the unfair and illegal conduct of which he complains. Plaintiff also
5 has no interests that are in conflict with or antagonistic to the interests of class members. Plaintiff
6 has retained highly competent and experienced class action attorneys to represent her interests
7 and the interests of the class. By prevailing on her own claim, Plaintiff will establish Defendants'
8 liability to all class members. Plaintiff and her counsel have the necessary financial resources to
9 adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their
10 fiduciary responsibilities to the class members and are determined to diligently discharge those
11 duties by vigorously seeking the maximum possible recovery for class members.

12 80. Superiority: There is no plain, speedy, or adequate remedy other than by
13 maintenance of this class action. The prosecution of individual remedies by members of the class
14 will tend to establish inconsistent standards of conduct for the Defendants and result in the
15 impairment of class members' rights and the disposition of their interests through actions to
16 which they were not parties. Class action treatment will permit a large number of similarly
17 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
18 and without the unnecessary duplication of effort and expense that numerous individual actions
19 would engender. Furthermore, as the damages suffered by each individual member of the class
20 may be relatively small, the expenses and burden of individual litigation would make it difficult
21 or impossible for individual members of the class to redress the wrongs done to them, while an
22 important public interest will be served by addressing the matter as a class action.

23 81. Nexus to California. The State of California has a special interest in regulating the
24 affairs of corporations that do business here. Defendants have more customers here than in any
25 other state. Accordingly, there is a substantial nexus between Defendants' unlawful behavior and
26 California such that the California courts should take cognizance of this action on behalf of a
27 class of individuals who reside anywhere in the United States.

28 82. Plaintiff is unaware of any difficulties that are likely to be encountered in the

1 management of this action that would preclude its maintenance as a class action.

2 **CAUSES OF ACTION**

3 **PLAINTIFF'S FIRST CAUSE OF ACTION**

4 **(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)**
On Behalf of Herself and the Class

5 83. Plaintiff realleges and incorporates the paragraphs of this Class Action Complaint
 6 as if set forth herein.

7 84. This cause of action is brought pursuant to the California Consumers Legal
 8 Remedies Act, California Civil Code § 1750, *et seq.* ("CLRA").

9 85. Defendants' actions, representations and conduct have violated, and continue to
 10 violate the CLRA, because they extend to transactions that are intended to result, or which have
 11 resulted, in the sale or lease of goods or services to consumers.

12 86. Plaintiff and other class members are "consumers" as that term is defined by the
 13 CLRA in California Civil Code § 1761(d).

14 87. The Flushable Products that Plaintiff (and others similarly situated class members)
 15 purchased from Defendants were "goods" within the meaning of California Civil Code § 1761(a).

16 88. By engaging in the actions, representations and conduct set forth in this Class
 17 Action Complaint, Defendants have violated, and continue to violate, § 1770(a)(2), § 1770(a)(5),
 18 § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code
 19 §1770(a)(2), Defendants' acts and practices constitute improper representations regarding the
 20 source, sponsorship, approval, or certification of the goods they sold. In violation of California
 21 Civil Code §1770(a)(5), Defendants' acts and practices constitute improper representations that
 22 the goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
 23 quantities, which they do not have. In violation of California Civil Code §1770(a)(7),
 24 Defendants' acts and practices constitute improper representations that the goods they sell are of a
 25 particular standard, quality, or grade, when they are of another. In violation of California Civil
 26 Code §1770(a)(8), Defendants have disparaged the goods, services, or business of another by
 27 false or misleading representation of fact. In violation of California Civil Code §1770(a)(9),
 28 Defendants have advertised goods or services with intent not to sell them as advertised.

Specifically, in violation of sections 1770 (a)(2), (a)(5), (a)(7) and (a)(9), Defendants' acts and practices led customers to falsely believe that that their Flushable Products were suitable for flushing down a toilet. In violation of section 1770(a)(8), Defendants falsely or deceptively market and advertise that, unlike products not specifically denominated as flushable, its Flushable Products are suitable for flushing down a toilet, when in fact none of the products are suitable for flushing.

89. Plaintiff requests that this Court enjoin Defendants from continuing to employ the unlawful methods, acts and practices alleged herein pursuant to California Civil Code § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the future, Plaintiff and the other members of the Class will continue to suffer harm.

90. CLRA § 1782 NOTICE. **Irrespective of any representations to the contrary in this Class Action Complaint, Plaintiff specifically disclaims, at this time, any request for damages under any provision of the CLRA.** Plaintiff, however, hereby provides Defendants with notice and demand that within thirty (30) days from that date, Defendants correct, repair, replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of herein. Defendants' failure to do so will result in Plaintiff amending this Class Action Complaint to seek, pursuant to California Civil Code § 1780(a)(3), on behalf of himself and those similarly situated class members, compensatory damages, punitive damages and restitution of any ill-gotten gains due to Defendants' acts and practices.

91. Plaintiff also requests that this Court award her her costs and reasonable attorneys' fees pursuant to California Civil Code § 1780(d).

PLAINTIFF'S SECOND CAUSE OF ACTION
(False Advertising, Business and Professions Code § 17500, et seq. ("FAL"))
On Behalf Of Himself and the Class

92. Plaintiff realleges and incorporates by reference the paragraphs of this Class Action Complaint as if set forth herein.

93. Beginning at an exact date unknown to Plaintiff, but within three (3) years preceding the filing of the Class Action Complaint, Defendants made untrue, false, deceptive and/or misleading statements in connection with the advertising and marketing of their Flushable

1 Products.

2 94. Defendants made representations and statements (by omission and commission)
3 that led reasonable customers to believe that they were purchasing products that could be flushed
4 down the toilet without problem. Defendants deceptively failed to inform Plaintiff, and those
5 similarly situated, that their Flushable Wipes were not suitable for disposal by flushing down a
6 toilet, and that the Flushable wipes are not regarded as flushable by municipal sewage systems;
7 routinely damage or clog pipes, septic systems, and sewage pumps; and do not disperse,
8 distingrate, or biodgrade like toilet paper.

9 95. Plaintiff and those similarly situated relied to their detriment on Defendants' false,
10 misleading and deceptive advertising and marketing practices, including each of the
11 misrepresentations and omissions set forth in paragraphs 31-38, and 70, above. Had Plaintiff and
12 those similarly situated been adequately informed and not intentionally deceived by Defendants,
13 they would have acted differently by, without limitation, refraining from purchasing Defendants'
14 Flushable Wipes or paying less for them.

15 96. Defendants' acts and omissions are likely to deceive the general public.

16 97. Defendants engaged in these false, misleading and deceptive advertising and
17 marketing practices to increase their profits. Accordingly, Defendants have engaged in false
18 advertising, as defined and prohibited by section 17500, et seq. of the California Business and
19 Professions Code.

20 98. The aforementioned practices, which Defendants used, and continue to use, to
21 their significant financial gain, also constitute unlawful competition and provide an unlawful
22 advantage over Defendants' competitors as well as injury to the general public.

23 99. Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as
24 necessary and according to proof, to restore any and all monies acquired by Defendants from
25 Plaintiff, the general public, or those similarly situated by means of the false, misleading and
26 deceptive advertising and marketing practices complained of herein, plus interest thereon.

27 100. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit
28 Defendants from continuing to engage in the false, misleading and deceptive advertising and

1 marketing practices complained of herein. The acts complained of herein occurred, at least in
2 part, within three (3) years preceding the filing of this Class Action Complaint.

3 101. Plaintiff and those similarly situated are further entitled to and do seek both a
4 declaration that the above-described practices constitute false, misleading and deceptive
5 advertising, and injunctive relief restraining Defendants from engaging in any such advertising
6 and marketing practices in the future. Such misconduct by Defendants, unless and until enjoined
7 and restrained by order of this Court, will continue to cause injury in fact to the general public
8 and the loss of money and property in that the Defendants will continue to violate the laws of
9 California, unless specifically ordered to comply with the same. This expectation of future
10 violations will require current and future customers to repeatedly and continuously seek legal
11 redress in order to recover monies paid to Defendants to which Defendants are not entitled.
12 Plaintiff, those similarly situated and/or other consumers nationwide have no other adequate
13 remedy at law to ensure future compliance with the California Business and Professions Code
14 alleged to have been violated herein.

15 102. As a direct and proximate result of such actions, Plaintiff and the other members of
16 the Class have suffered, and continue to suffer, injury in fact and have lost money and/or property
17 as a result of such false, deceptive and misleading advertising in an amount which will be proven
18 at trial, but which is in excess of the jurisdictional minimum of this Court.

19 **PLAINTIFF'S THIRD CAUSE OF ACTION**
20 **(Fraud, Deceit and/or Misrepresentation)**
21 **On Behalf of Herself and the Class**

22 103. Plaintiff realleges and incorporates by reference the paragraphs of this Class
23 Action Complaint as if set forth herein.

24 104. In 2013, Defendants fraudulently and deceptively led Plaintiff to believe that
25 Defendants' Flushable Wipes were suitable for flushing down a toilet. Defendants also failed to
26 inform Plaintiff that Defendants' Flushable Wipes were not suitable for disposal by flushing
27 down a toilet, and the wipes are not regarded as flushable by municipal sewage systems; routinely
28 damages or clogs pipes, septic systems, and sewage pumps; and do not disperse, disintegrate, or
biodgrade like toilet paper.

1 105. These omissions were material at the time they were made. They concerned
2 material facts that were essential to the analysis undertaken by Plaintiff as to whether to purchase
3 Defendants' Flushable Wipes.

4 106. Defendants made identical misrepresentations and omissions to members of the
5 Class regarding Defendants' Flushable Wipes.

6 107. In not so informing Plaintiff and the members of the Class, Defendants breached
7 their duty to her. Defendants also gained financially from, and as a result of, their breach.

8 108. Plaintiff and those similarly situated relied to their detriment on Defendants'
9 fraudulent omissions. Had Plaintiff and those similarly situated been adequately informed and
10 not intentionally deceived by Defendants, they would have acted differently by, without
11 limitation, not purchasing (or paying less for) Defendants' Flushable Wipes.

12 109. Defendants had a duty to inform class members at the time of their purchase of
13 that the Flushable Wipes were not suitable for flushing down a toilet, and the wipes are not
14 regarded as flushable by municipal sewage systems; routinely damage or clog pipes, septic
15 systems, and sewage pumps; and do not disperse, disintegrate, or biodegrade like toilet paper.
16 Defendants omitted to provide this information to class members. Class members relied to their
17 detriment on Defendants' omissions. These omissions were material to the decisions of the class
18 members to purchase the Flushable Wipes. In making these omissions, Defendants breached their
19 duty to class members. Defendants also gained financially from, and as a result of, their breach.

20 110. By and through such fraud, deceit, misrepresentations and/or omissions,
21 Defendants intended to induce Plaintiff and those similarly situated to alter their position to their
22 detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiff and those
23 similarly situated to, without limitation, to purchase their Flushable Wipes.

24 111. Plaintiff and those similarly situated justifiably and reasonably relied on
25 Defendants' omissions, and, accordingly, were damaged by the Defendants.

26 112. As a direct and proximate result of Defendants' misrepresentations, Plaintiff and
27 those similarly situated have suffered damages, including, without limitation, the amount they
28 paid for the Flushable Wipes.

113. Defendants' conduct as described herein was willful and malicious and was designed to maximize Defendants' profits even though Defendants knew that it would cause loss and harm to Plaintiff and those similarly situated.

PLAINTIFF'S FOURTH CAUSE OF ACTION
(Unfair, Unlawful and Deceptive Trade Practices,
Business and Professions Code § 17200, et seq.)
On Behalf of Herself and the Class

114. Plaintiff realleges and incorporates by reference the paragraphs of this Class Action Complaint as if set forth herein.

115. Within four (4) years preceding the filing of this Class Action Complaint, and at all times mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful and deceptive trade practices in California by engaging in the unfair, deceptive and unlawful business practices outlined in this Class Action Complaint. In particular, Defendants have engaged, and continue to engage, in unfair, unlawful and deceptive trade practices by, without limitation, the following:

a. deceptively representing to Plaintiff, and those similarly situated, the Flushable Products were suitable for flushing down a toilet;

b. failing to inform Plaintiff, and those similarly situated, that the Flushable Products were not suitable for disposal by flushing down a toilet, and the wipes are not regarded as flushable by municipal sewage systems; routinely damage or clog pipes, septic systems, and sewage pumps; and do not disperse, disintegrate, or biodegrade like toilet paper.

c. engaging in fraud, deceit, and misrepresentation as described herein;

d. violating the CLRA as described herein; and

e. violating the FAL as described herein.

116. Plaintiff and those similarly situated relied to their detriment on Defendants' unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated been adequately informed and not deceived by Defendants, they would have acted differently by not purchasing (or paying less for) Defendants' Flushable Wipes.

117. Defendants' acts and omissions are likely to deceive the general public.

1 118. Defendants engaged in these unfair practices to increase their profits.
2 Accordingly, Defendants have engaged in unlawful trade practices, as defined and prohibited by
3 section 17200, et seq. of the California Business and Professions Code.

4 119. The aforementioned practices, which Defendants have used to their significant
5 financial gain, also constitute unlawful competition and provide an unlawful advantage over
6 Defendants' competitors as well as injury to the general public.

7 120. Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as
8 necessary and according to proof, to restore any and all monies acquired by Defendants from
9 Plaintiff, the general public, or those similarly situated by means of the unfair and/or deceptive
10 trade practices complained of herein, plus interest thereon.

11 121. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit
12 Defendants from continuing to engage in the unfair trade practices complained of herein.

13 122. The acts complained of herein occurred, at least in part, within four (4) years
14 preceding the filing of this Class Action Complaint.

15 123. Plaintiff and those similarly situated are further entitled to and do seek both a
16 declaration that the above-described trade practices are unfair, unlawful and/or fraudulent, and
17 injunctive relief restraining Defendants from engaging in any of such deceptive, unfair and/or
18 unlawful trade practices in the future. Such misconduct by Defendants, unless and until enjoined
19 and restrained by order of this Court, will continue to cause injury in fact to the general public
20 and the loss of money and property in that Defendants will continue to violate the laws of
21 California, unless specifically ordered to comply with the same. This expectation of future
22 violations will require current and future customers to repeatedly and continuously seek legal
23 redress in order to recover monies paid to Defendants to which Defendants are not entitled.
24 Plaintiff, those similarly situated and/or other consumers nationwide have no other adequate
25 remedy at law to ensure future compliance with the California Business and Professions Code
26 alleged to have been violated herein.

27 124. As a direct and proximate result of such actions, Plaintiff and the other members of
28 the Class have suffered and continue to suffer injury in fact and have lost money and/or property

1 as a result of such deceptive, unfair and/or unlawful trade practices and unfair competition in an
 2 amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this
 3 Court. Among other things, Plaintiff and the class lost the amount they paid for the Flushable
 4 Products.

5 125. As a direct and proximate result of such actions, Defendants have enjoyed, and
 6 continue to enjoy, significant financial gain in an amount which will be proven at trial, but which
 7 is in excess of the jurisdictional minimum of this Court.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for judgment as follows:

10 A. On Cause of Action Number 1 against Defendants and in favor of Plaintiff
 11 and the other members of the Class:

12 1. for restitution and injunctive relief pursuant to California Civil
 13 Code section 1780;

14 2. [Reserved]; and

15 3. [Reserved].

16 B. On Causes of Action Numbers 2 and 4 against Defendants and in favor of
 17 Plaintiff and the other members of the Class:

18 1. for restitution pursuant to, without limitation, the California
 19 Business & Professions Code §§ 17200, et seq. and 17500, et seq.;
 20 and

21 2. for injunctive relief pursuant to, without limitation, the California
 22 Business & Professions Code §§ 17200, et seq. and 17500, et seq.;

23 C. On Cause of Action Number 3 against Defendants and in favor of Plaintiff
 24 and the other members of the Class:

25 1. an award of compensatory damages, the amount of which is to be
 26 determined at trial; and

27 2. an award of punitive damages, the amount of which is to be
 28 determined at trial.

1 D. On all causes of action against Defendants and in favor of Plaintiff, class
2 members and the general public:

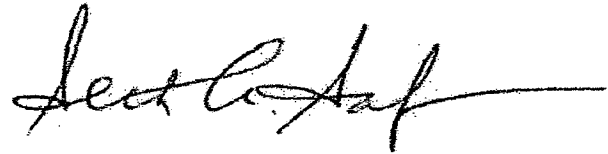
- 3 1. for reasonable attorneys' fees according to proof pursuant to,
4 without limitation, the California Legal Remedies Act and
5 California Code of Civil Procedure § 1021.5;
6 2. for costs of suit incurred; and
7 3. for such further relief as this Court may deem just and proper.

8 **JURY TRIAL DEMANDED**

9 Plaintiff hereby demands a trial by jury.

10 Dated: March 13, 2014

GUTRIDE SAFIER LLP

11
12 
13

14
15 Adam J. Gutride, Esq.
16 Seth A. Safier, Esq.
17 Kristen G. Simplicio, Esq.
835 Douglass Street
San Francisco, California 94114

18 Attorneys for Plaintiff
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23
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28

EXHIBIT A

I, Jennifer Davidson, declare:

1. I am the Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. I am a resident of San Francisco, California. As set forth in my complaint, in 2013, I purchased Scott Naturals® Flushable Moist Wipes from the Safeway store located at 2020 Market Street, San Francisco.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 11th day of March, 2014, in San Francisco, California.



Jennifer Davidson

The Early Settlement Program:

Resolves cases **quickly and economically**

Has been in operation for **over 20 years**

Has a **97.8% Settlement Rate**
97% Satisfaction Rate

Early Settlement provides:

Early Settlement Program
10 years of experience

Three Referees

Cost Effective

Efficient

Flexible

Non-Adversarial

Non-Prejudicial

Non-Adversarial

Non-Prejudicial

Non-Adversarial

Non-Prejudicial

Non-Adversarial

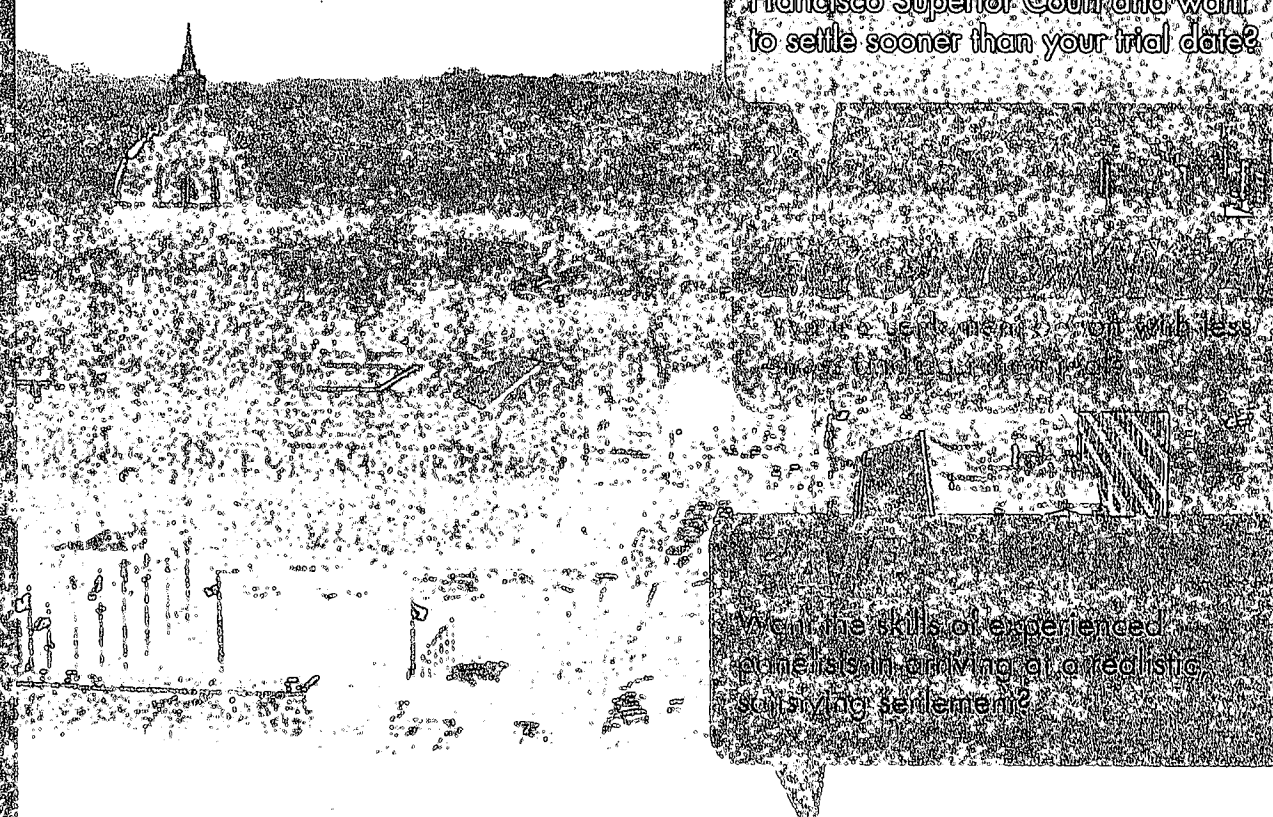
Non-Prejudicial

Non-Adversarial

Non-Prejudicial

Non-Adversarial

Non-Prejudicial



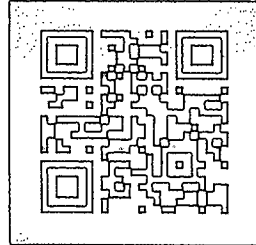
FAST

Do you have a case filed in San Francisco Superior Court and want to settle sooner than your trial date?

Want a settlement sooner with less stress and expense?

Want the skills of experienced panelists in arriving at a realistic, satisfying settlement?

Learn more about the Early Settlement Program—scan the QR Code or visit www.sfbar.org/adr/esp



Consider The Bar Association
of San Francisco's

**Early
Settlement
Program**

What is ESP?

The Bar Association of San Francisco's **Early Settlement Program (ESP)** is available as one of San Francisco Superior Court's Alternative Dispute Resolution (ADR) programs (Local Rule 4.3).

ESP is a **highly successful** ADR program that handles cases in areas of law such as business, personal injury, employment, labor, civil rights, discrimination, insurance, malpractice, landlord/tenant, and many others.

ESP is **unique** in that the panelists, in helping you move toward settlement, can provide you confidential feedback about their evaluation of your case, including opinions as to potential case value.

For more information as well as the complete Policies & Procedures, go to: **www.sfbar.org/esp**

Who are the Panelists?

They are experienced attorneys with at least **10 years** of trial experience. Panels consist of one plaintiff and one defense attorney. Sometimes an attorney who is experienced in both types of representation serves as a sole panelist.

Costs

There is a \$295 administrative fee per party, capped at \$590 for multiple parties represented by the same attorney, to pay for the cost of running this program. If you have a fee waiver with the Superior Court, your fee will be waived by the ESP program.

Contact

► email **esp@sfbar.org**

► phone: **415-982-1600**

► fax: **415-989-0381**

Steps

The forms you need can be found at **www.sfbar.org/esp**, or email adr@sfbar.org or call 415-782-8905 for a packet to be sent to you.

- ① Please complete the ESP Agreement and return it to BASF via email at adr@sfbar.org or by fax to 415-989-0381. You don't have to get the other parties to sign, just send yours.
- ② When all parties have signed the ESP Agreement, you will be sent the Notice of ESP, along with an invoice.
- ③ There is a \$295 administrative fee per party, with a cap of \$590 for multiple parties represented by the same attorney. You can pay by check, money order or credit card.
- ④ Send your administrative fee by fax, email or mail to: BASF / ESP, 301 Battery Street, Third Floor, San Francisco, California 94111.
- ⑤ When BASF receives the fees from all parties, your matter will be assigned to a panelist (or panel of 2), who you will work with to set the date, time and location for your conference.
- ⑥ If you must reschedule your ESP conference date, work with the other side and your panelist(s) to set the new date. BASF does not need to be notified.
- ⑦ Before your conference, provide a copy of your description of the dispute to all parties and panelists. BASF does not need a copy.
- ⑧ If the matter is settled in your ESP conference, congratulations!
- ⑨ If the matter is not settled in your ESP conference, your initial court date remains the same.

CASE NUMBER: CGC-14-537962 JENNIFER DAVIDSON, AN INDIVIDUAL, ON BEHALF OF V

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: AUG-13-2014

TIME: 10:30AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3

CRC 3.725 requires the filing and service of a case management statement form GM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.10. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

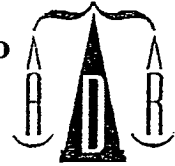
Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



Superior Court of California, County of San Francisco

Alternative Dispute Resolution Program Information Package



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-782-8905 or www.sfbabar.org/adr for more information.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
415-551-3876

Or, visit the court ADR website at www.sfsuperiorcourt.org

The San Francisco Superior Court offers different types of ADR processes for general civil matters; each ADR program is described in the subsections below:

1) SETTLEMENT CONFERENCES

The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute early in the litigation process.

(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP): ESP remains as one of the Court's ADR programs (see Local Rule 4.3) but parties must select the program – the Court no longer will order parties into ESP.

Operation: Panels of pre-screened attorneys (one plaintiff, one defense counsel) each with at least 10 years' trial experience provide a minimum of two hours of settlement conference time, including evaluation of strengths and weakness of a case and potential case value. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist. BASF handles notification to all parties, conflict checks with the panelists, and full case management. The success rate for the program is 78% and the satisfaction rate is 97%. Full procedures are at: www.sfbar.org/esp.

Cost: BASF charges an administrative fee of \$295 per party with a cap of \$590 for parties represented by the same counsel. Waivers are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see the enclosed brochure.

(B) MANDATORY SETTLEMENT CONFERENCES: Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement, before incurring the expense of going to court, that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law. A mediator strives to bring the parties to a mutually beneficial settlement of the dispute.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO, in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

Operation: Experienced professional mediators, screened and approved, provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process. BASF staff handles conflict checks and full case management.

Mediators work with parties to arrive at a mutually agreeable solution. The success rate for the program is 64% and the satisfaction rate is 99%.

Cost: BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the administrative fee are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see the enclosed brochure.

(B) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private mediation. Parties may elect any private mediator or mediation organization of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION: When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

Operation: Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed.

Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Cost: There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE THE ATTACHED STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF TO ENROLL IN THE LISTED BASF PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF COMPLETED STIPULATIONS TO BASF.

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>):		FOR COURT USE ONLY	
TELEPHONE NO.: FAX NO. (<i>Optional</i>): E-MAIL ADDRESS (<i>Optional</i>): ATTORNEY FOR (<i>Name</i>):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:			
CASE MANAGEMENT STATEMENT (<i>Check one</i>): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER:	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (<i>if different from the address above</i>): _____ <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (<i>name</i>): _____			

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☐ This statement is submitted by party (name):
 - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
4. **Description of case**
 - a. Type of case in ☐ complaint ☐ cross-complaint (Describe, including causes of action):

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4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. Trial date

a. ☐ The trial has been set for (date):

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. Estimated length of trial

The party or parties estimate that the trial will take *(check one):*

a. ☐ days *(specify number):*

b. ☐ hours *(short causes) (specify):*

8. Trial representation *(to be answered for each party)*

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference *(specify code section):*

10. Alternative dispute resolution (ADR)

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation (if available).**

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption):*

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10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

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11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☐ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | | | |
|--------------|--------------------|-------------|
| <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

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17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.